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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,706	11/06/2000	Robert J Briscoe	36-1384	3584
7590 04/06/2004				
Nixon & Vanderhye				
1100 North Glebe Road 8th Floor				
Arlington, VA 22201-4714				
		EXAMINER		
		COLBERT, ELLA		
		ART UNIT		PAPER NUMBER
		3624		

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/674,706

Applicant(s)

BRISCOE ET AL.

Examiner

Ella Colbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 4-33 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1, 4-33, and 39 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Claims 1, 4-33, and 39 are pending in this communication filed 01/07/04 entered as Brief, paper no. 17.
2. The Notice of Appeal with 3 months extension of time filed 11/07/03 has been entered as paper no. 15.
3. The Request for Oral Hearing filed 01/07/04 has been entered as paper no. 16.
4. Applicant's claim for foreign priority under 35 U.S.C. 119 and receipt of the certified copies of the priority documents are hereby acknowledged.
5. Applicant's formal drawings with the proposed drawing corrections filed 02/24/03 have been reviewed and approved by the present Examiner.
6. Applicant is respectfully requested to note the Examiner handling this application has changed. All future correspondence should be addressed to Examiner E. Colbert.
7. Applicant's finality of the rejection of the last Office action is hereby withdrawn in view of the new ground(s) of rejection and prosecution is reopened here below.

***Election/Restrictions***

8. Group I. Claims 1, 4-25, 29-33, and 39 are, drawn to sampling the usage of network resources, classified in class 713, subclass 201.

Group II. Claim 26 is, drawn to routing packets in a network, classified in class 709, subclass 238.

Group III. Claims 27 and 28 are, drawn to calculating an edge price for data transmission, classified in class 705, subclass 13.

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9. Inventions Group I, Group II, and Group III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention Group I has separate utility such as measuring the plurality of customer terminals usage, calculating a network usage charge, and sampling usage of the network resources and Group II has separate utility such as the operation of a packet network, scheduling packets, and policing the class of service levels and Group III has separate utility such as receiving data from an adjacent domain and a price for transmitting the data and calculating an edge price for the data transmission. See MPEP § 806.05(d).

10. Because these inventions are distinct for the reasons given above and the search required for Group I and Group III is not required for Group II. The search required for Group II is not required for Group I and Group III. The search for Group III is not required for Group I and Group II. Restriction for examination purposes as indicated is proper.

11. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

12. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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13. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

***Inquiries***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 703-308-7064. The examiner can normally be reached on Monday-Thursday from 6:30 am -5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1038. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
E. Colbert  
April 2, 2004